Jason M. Drangel (JD 7204)
jdrangel@ipcounselors.com
Ashly E. Sands (AS 7715)
asands@ipcounselors.com
Kerry B. Brownlee (KB 0823)
kbrownlee@ipcounselors.com
EPSTEIN DRANGEL LLP
60 East 42nd Street, Suite 2520
New York, NY 10165
Telephone: (212) 292-5390
Facsimile: (212) 292-5391
Attorneys for Plaintiff
JLM Couture, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JLM COUTURE, INC. *Plaintiff* v. IMPRESSION BRIDAL, INC. d/b/a ASHLEY & JUSTIN BRIDE and ASHDON, INC. d/b/a ASHLEY & JUSTIN BRIDE *Defendants*	CIVIL ACTION NO.17-cv-4246 **COMPLAINT** **JURY TRIAL REQUESTED**

Plaintiff JLM Couture, Inc. ("JLM" or "Plaintiff"), a Delaware corporation, by and through its undersigned counsel, alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for: copyright infringement of a federally registered copyright in violation of the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*; for trade dress infringement, false designation of origin and unfair competition in violation of Section 43(a) of the Trademark Act of 1946, as amended (15 U.S.C. §1125(a)); and for related common law claims. Plaintiff seeks injunctive relief, an accounting, compensatory damages and/or statutory damages, treble damages, attorneys' fees and costs, and such other relief as the Court deems

proper.

JURISDICTION AND VENUE

2. This Court has federal subject matter jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) as an action arising out of violations of the Lanham Act, 15 U.S.C. §§ 1051 *et seq.* and the Copyright Act, 17 U.S.C. §§ 101 *et seq.*; pursuant to 28 U.S.C. § 1338(b) as an action arising out of claims for false designation of origin and unfair competition; as well as pursuant to 28 U.S.C. § 1332 because there is diversity between the parties and the matter in controversy exceeds, exclusive of interests and costs, the sum of seventy-five thousand dollars. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

3. Venue is proper, *inter alia*, pursuant to 28 U.S.C. § 1391 because Defendants conduct business in this district and, on information and belief, a substantial part of the events or omissions giving rise to the claims occurred in this judicial district, and has caused damage to Plaintiff in this district.

4. Personal jurisdiction exists over Defendants because on information and belief, Defendants regularly conduct business in New York and in this judicial district, transact to supply goods within New York and in this judicial district, have committed tortious acts both within and without the State of New York that have caused damage to Plaintiff in New York, and otherwise avail themselves of the privileges and protections of the laws of the State of New York, such that this Court's assertion of jurisdiction over Defendants does not offend traditional notions of fair play and due process.

THE PARTIES

5. JLM is a corporation organized and existing under the laws of the State of Delaware, which is registered to do business in the State of New York, and has its principal place

of business at 225 West 37th Street, New York, New York 10018.

6. Upon information and belief, Defendant Impression Bridal, Inc. d/b/a Ashley & Justin Bride is a corporation organized and existing under the laws of the State of Texas, with a mailing address of 4850 Wright Road, Suite 180, Stafford, Texas 77477, and a registered office address of 14835 Charlmont Drive, Houston, Texas 77083 ("Impression Bridal").

7. Upon information and belief, Defendant Ashdon, Inc. d/b/a Ashley & Justin Bride is a corporation organized and existing under the laws of the State of Texas, with a mailing address of 5855 Sovereign Drive, Suite A, Houston, Texas 77036, and a registered office address of 11100 W. Airport Blvd., Stafford, Texas 77477 ("Ashdon").

8. Impression Bridal and Ashdon are collectively hereinafter referred to as "Defendants" or "Ashley & Justin".

9. Upon information and belief, Ashdon is the parent company of Impression Bridal.

10. Upon information and belief, and at all times relevant hereto, such a unity of interest and ownership exist between Impression Bridal and Ashdon such that separate corporate personalities did not, and do not, in reality exist and thus, the tortious acts of one, as well as jurisdictional contacts, are attributable to the other.

GENERAL ALLEGATIONS

Plaintiff and Its Well-Known West Gown & West Trade Dress

11. Plaintiff, a leading multi-label design house specializing in luxury wedding apparel, is the designer, manufacturer, distributor and retailer of certain widely-acclaimed bridal gowns, bridesmaid dresses, flower girl dresses, and other accessories, which are produced with the highest quality of materials and craftsmanship.

12. Plaintiff is the owner of various successful bridal gown collections, including, without limitation, the Blush by Hayley Paige collection (hereinafter, "Blush by Hayley Paige Collection"), which are marketed and/or sold under various popular brands/trademarks, including, but not limited to, Hayley Paige® (U.S. Trademark Registration No. 4,161,091).

13. The Blush by Hayley Paige Collection is one of JLM's most popular and successful collections of bridal gowns, which has been featured in numerous elite bridal publications, including, but not limited to, *The Knot*.

14. JLM is the owner or licensee of all intellectual property rights in and to the Blush by Hayley Paige Collection, including, without limitation, all registered and unregistered copyrights in and to the catalogs and look books featuring designs from the Blush by Hayley Paige Collection, as well as original fabric designs developed by Hayley Paige herself ("Ms. Paige").

15. Specifically, JLM is the owner of U.S. Copyright Registration No. VA 2-034-297, entitled "Meraki Fabric", which covers one of the unique fabric designs created by Ms. Paige—a leading designer in the wedding dress industry ("JLM Work"). A true and correct copy of the certificate of registration for the JLM Work, along with its corresponding deposit materials, is attached hereto as **Exhibit A**.

16. One of the distinctive bridal gowns in the Blush by Hayley Paige Collection featuring the JLM Work, entitled the "West", which debuted at JLM's press show in October 2016, appears in JLM's Spring 2017 look book, and was advertised and/or featured in *The Knot* Spring 2017[1], *Brides* June/July 2017, and *Bridal Guide Magazine* Fall 2017 and

[1] *See* https://issuu.com/theknot/docs/theknotspring2017, which was published online on January 18, 2017, and hit newsstands on or about the same date.

July/August 2017, is one of JLM's best-selling designs (the "West Gown").

17. The West Gown features a unique combination of design elements—namely, a fit to flare silhouette with an elongated bodice, a deep plunging sweetheart neckline, a low scoop back, spaghetti straps, original sequined embellishment comprised of the JLM Work throughout the entirety of the gown, and a full floor-sweeping skirt—that collectively create a distinct commercial impression that is instantly recognizable as originating with JLM (hereinafter referred to as the, "West Trade Dress"). Accordingly, the West Trade Dress is not functional.

18. Since the West Gown debuted, it, and the West Trade Dress, has been advertised and/or promoted via JLM's website, located at www.jlmcouture.com, and offered for sale and/or sold at exclusive authorized bridal retailers worldwide, both online and offline, including one hundred sixty five (165) domestic retailers, many within the State of New York and the tristate area, such as RK Bridal (New York, NY), The White Gown (New York, NY), M.A. Carr Bridal (Orchard Park, NY), Town Shop (Poughkeepsie, NY), Susan Deborah Bridal (Rochester, NY), Sayville Bridal (Sayville, NY), Angela's Bridal (Albany, NY), Jaehee Bridal Atelier (Englewood, NJ), Lotus Bridal (Mineola, NY), and The Plumed Serpent (Westport, CT), among others.

19. The success of the West Gown featuring the West Trade Dress and JLM Work is due, in part, to Plaintiff's extensive marketing and promotional efforts, and the significant time, money and effort Plaintiff has devoted thereto, which have resulted in consumer recognition, awareness and goodwill in, and associated with, the West Trade Dress and the JLM Work, which are incorporated into the West Gown.

20. In addition, Plaintiff owes a substantial amount of the success of the West

Gown and specifically, the West Trade Dress, to its consumers, and the word-of-mouth buzz that said consumers have generated, particularly via social media.

21. Plaintiff's efforts, the quality of the West Gown, Plaintiff's marketing and promotional efforts, and the word-of-mouth buzz generated by retailers, retail buyers, consumers and the like, have prominently placed the West Gown and specifically, the West Trade Dress, in the minds of the public. Retailers, retail buyers, consumers, and members of the public have become familiar with the West Gown and specifically, the West Trade Dress, and have come to recognize the West Trade Dress and associate it solely with JLM and the Blush by Hayley Paige Collection and as an indication of the source of the same.

22. The West Trade Dress is thus the means by which JLM is known to the public and the trade (*i.e.*, as the exclusive source and origin of the West Gown that incorporates the West Trade Dress), and the West Trade Dress has therefore acquired a valuable reputation and goodwill among the public as a result of such associations (*i.e.*, it has acquired distinctiveness or secondary meaning).

23. JLM has gone to great lengths to protect its intellectual property rights in and to the Blush by Hayley Paige Collection, including, without limitation, all rights in and to the JLM Work, the West Trade Dress and the West Gown.

24. Defendants are not, and have never been, authorized by JLM or any of its authorized agents to copy, manufacture, import, export, advertise, distribute, offer for sale, sell and/or otherwise use Plaintiff's JLM Work or any substantially similar designs and/or Plaintiff's West Trade Dress or anything confusingly similar thereto.

Defendants' Wrongful and Infringing Conduct

25. In light of Plaintiff's enormous success, the JLM Work, the West Trade Dress, and the West Gown have become targets for unscrupulous individuals and entities who

wish to take a free ride on the goodwill, reputation and fame Plaintiff has amassed in the same.

26. Plaintiff investigates and enforces against such activity, and through such efforts, learned of Defendants' actions, which vary and include, but are not limited to: manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, and/or selling at least one bridal gown that, at the very least, features a blatant knock off of the JLM Work and/or a fabric design that is substantially similar thereto and infringes the West Trade Dress ("Infringing Gown") to U.S. retailers, wholesalers and/or consumers (including those located in the State of New York and this judicial district) since at least March 2017. A side-by side comparison of the Infringing Gown to the West Gown featuring the JLM Work and West Trade Dress is attached hereto as **Exhibit B**.

27. Upon information and belief, the Infringing Gown has been advertised, marketed, promoted and/or displayed to U.S. retailers, wholesalers and/or consumers (including those located in the State of New York and this judicial district) through, among other media vehicles, Defendants' website, located at www.ashleyjustinbride.com[2], Defendants' social media accounts, such as Instagram, and its appearance in the March/April 2017 issue of *Vows* magazine.

28. Upon information and belief, the Infringing Gown, which is less expensive than the West Gown and of a substandard quality, is being distributed, offered for sale and/or sold to and in various third-party retailers (per Defendants' website, twenty-nine (29) retailers in New York City alone), including, importantly, some of the same retailers that offer for sale and/or sell the Blush by Hayley Paige Collection and the West Gown, including those located within the State of New York and the surrounding tristate area, such as RK Bridal (New York, NY), Jaehee Bridal Atelier (Englewood, NJ) and Lotus Bridal (Mineola, NY).

[2] *See* http://www.ashleyjustinbride.com/#!/dress-details/10495.

29. After Plaintiff became aware of Defendants' infringing actions, as outlined herein, Plaintiff's counsel sent a cease and desist letter to Defendants on March 30, 2017 ("C&D"), which, among other things, notified Defendants of their infringing actions, demanded that Defendants cease engaging in the same, and set forth evidence of actual consumer confusion comprised of an e-mail sent to Plaintiff from one of its retail customers. A true and correct copy of the C&D, along with its corresponding exhibits, is attached hereto as **Exhibit C**.

30. Defendants, through their counsel, first issued a response to the C&D on March 30, 2017, which was followed up by a more substantive letter by Defendants' newly engaged counsel on April 20, 2017 wherein Defendants, among other things, rejected Plaintiff's claims and indicated that they would not comply with the demands set forth in the C&D, including the cessation of all production, advertising, marketing, promotion, distribution, display, offering for and/or sales of the Infringing Gown.

31. By these dealings in the Infringing Gown (including, but not limited to: manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, and/or selling the Infringing Gown), Defendants have violated Plaintiff's exclusive rights in its JLM Work and West Trade Dress, and have used designs that are substantially similar to and/or confusingly similar to, identical to, and/or constitute infringement of Plaintiff's JLM Work and West Trade Dress, in order to confuse consumers and aid in the promotion and sales of their Infringing Gown. Defendants' infringing actions began after Plaintiff's adoption and use of its JLM Work and West Trade Dress.

32. Prior to and contemporaneous with their unlawful actions alleged herein, Defendants had knowledge of Plaintiff's ownership of its JLM Work and West Trade Dress, and of the notoriety and strength of its JLM Work and West Trade Dress, and the incalculable

goodwill associated therewith, and in bad faith adopted, and have continued to use, Plaintiff's JLM Work and West Trade Dress.

33. Defendants were placed on notice of their infringing actions, yet they have continued to engage in such illegal and infringing actions, as alleged herein, knowingly and intentionally, and in bad faith, for the purpose of trading on the goodwill and reputation of the JLM Work and West Trade Dress.

34. In fact, despite having been placed on notice by Plaintiff in March 2017, as of the date of the filing of this action, Defendants continue to extensively advertise, market, promote, distribute, display, offer for sale and/or sell the Infringing Gown, particularly via Defendants' website and Instagram account, which has 62,000 followers. True and correct date-stamped screenshots exemplifying the foregoing are attached hereto as **Exhibit D**.

35. Not only have Defendants continued their infringing actions since being placed on notice of the same by Plaintiff, but also, Defendants' promotional efforts have generated comments by consumers, retailers and/or wedding industry professionals regarding the striking similarities between the Infringing Gown and the West Gown featuring the JLM Work and West Trade Dress. Defendants have even gone so far as to respond to such comments by disparaging JLM and the West Gown in an effort to unfairly compete with Plaintiff. A screen shot evidencing an example of some of the comments appearing on one of Defendants' Instagram posts featuring the Infringing Gown in which Defendants wrote that "our dress [the Infringing Gown] is less expensive and substantially higher quality [as compared to the West Gown]" is attached hereto as **Exhibit E**.

36. Defendants' illegal and infringing actions, as alleged herein, will cause confusion, mistake, and deceive consumers, the public, and the trade with respect to the source

or origin of Defendants' Infringing Gown, and cause consumers to erroneously believe that the Infringing Gown is licensed by or otherwise associated with Plaintiff, thereby damaging Plaintiff.

37. Through these actions, Defendants have, among other things, willfully and in bad faith committed the following, all of which have caused and will continue to cause irreparable harm to Plaintiff: infringed Plaintiff's JLM Work; infringed Plaintiff's West Trade Dress; defamed/disparaged JLM's products, including the West Gown; engaged in unfair competition; and unfairly and unjustly profited from such activities at Plaintiff's expense.

38. Unless enjoined, Defendants will continue to cause irreparable harm to Plaintiff.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
(Federal Copyright Infringement)
[17 U.S.C. § 501(a)]

39. Plaintiff repeats and re-alleges every allegation set forth in the preceding paragraphs.

40. JLM is the exclusive owner of the JLM Work.

41. Defendants had, and have, actual notice of Plaintiff's exclusive rights in and to the JLM Work.

42. Defendants did not attempt and failed to obtain Plaintiff's consent or authorization to use, manufacture, reproduce, copy, display, prepare derivative works of, distribute, sell, transfer, rent, perform, and/or market Plaintiff's JLM Work.

43. Without permission, Defendants knowingly and intentionally reproduced, copied and displayed Plaintiff's JLM Work by manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling the Infringing

Gown, which is comprised of a fabric design that is, at a minimum, substantially similar to Plaintiff's JLM Work.

44. Defendants' unlawful and willful actions, as alleged herein, constitute infringement of Plaintiff's JLM Work, including Plaintiff's exclusive rights to reproduce, distribute and/or sell said JLM Work in violation of 17 U.S.C. § 501(a).

45. Defendants' knowing and intentional copyright infringement, as alleged herein, has caused substantial and irreparable harm to Plaintiff and unless enjoined, Defendants will continue to cause substantial and irreparable harm to Plaintiff for which it has no adequate remedy at law. Plaintiff is therefore entitled to injunctive relief, Plaintiff's actual damages and Defendants' profits in an amount to be proven at trial and enhanced discretionary damages or, in the alternative, statutory damages for willful copyright infringement of up to $150,000 per work infringed, and reasonable attorneys' fees and costs.

SECOND CAUSE OF ACTION
(Trade Dress Infringement)
[15 U.S.C. § 1125(a)/Lanham Act § 43(a) and § 1117(a)]

46. Plaintiff repleads and incorporates by reference each and every allegation set forth in the preceding paragraphs.

47. Plaintiff, as the owner of all common law right, title, and interest in and to the West Trade Dress, has standing to maintain an action for trade dress infringement under the Lanham Act § 43(a) (15 U.S.C. § 1125).

48. As a result of Plaintiff's marketing and promotional efforts, its extensive sales, the distinctive nature of the West Trade Dress, and the word-of-mouth buzz generated by its consumers and others in the bridal industry, the West Trade Dress, comprised of the unique combination of elements identified *supra*, which collectively create a district commercial

impression, that is recognized as emanating from a single source—JLM—has acquired secondary meaning.

49. The elements that comprise the West Trade Dress are collectively not necessary for consumers to use and/or wear the West Gown or bridal gowns generally. Moreover, there are a plethora of other designs and/or design elements that are readily available to competitors in the bridal sector. Accordingly, the West Trade Dress is not functional.

50. Defendants knowingly and willfully used in commerce a design that is identical or confusingly similar to the West Trade Dress with the intent to cause confusion, to cause mistake and to deceive the purchasing public to believe, in error, that Defendants' substandard Infringing Gown is authorized, sponsored, approved, endorsed or licensed by Plaintiff, and/or that Defendants are affiliated, connected or associated with Plaintiff, thereby creating a likelihood of confusion by consumers as to the source of the Infringing Gown, and allowing Defendants to capitalize on the goodwill associated with, and the consumer recognition of, the West Trade Dress, to Defendants' substantial profit in blatant disregard of Plaintiff's rights.

51. Defendants' actions have been deliberate and committed with knowledge of Plaintiff's exclusive rights and goodwill in the West Trade Dress, as well as with bad faith and the intent to cause confusion, mistake and deception.

52. As a direct and proximate consequence of Defendants' unlawful and infringing actions, as alleged herein, Plaintiff has suffered substantial and irreparable injury, loss and damage to its business and to its rights in and to the West Trade Dress and the goodwill associated therewith, for which it has no adequate remedy at law, and unless immediately enjoined, Defendants will continue to cause substantial and irreparable injury, loss and damage

to Plaintiff and its rights in and to the West Trade Dress and the goodwill associated therewith.

53. Based on Defendants' wrongful and infringing actions, Plaintiff is entitled to injunctive relief, as well as monetary damages and other remedies provided by the Lanham Act, including damages that Plaintiff has sustained and will sustain as a result of Defendants' unlawful and infringing actions as alleged herein, and all gains, profits and advantages obtained by Defendants as a result thereof, enhanced discretionary damages and reasonable attorneys' fees and costs.

THIRD CAUSE OF ACTION
(False Designation of Origin, Passing Off & Unfair Competition)
[15 U.S.C. § 1125(a)/Lanham Act § 43(a) and § 1117(a)]

54. Plaintiff repleads and incorporates by reference each and every allegation set forth in the preceding paragraphs.

55. Plaintiff, as the owner of all common law right, title, and interest in and to the West Trade Dress, has standing to maintain an action for false designation of origin and unfair competition under the Lanham Act § 43(a) (15 U.S.C. § 1125).

56. Plaintiff's West Trade Dress has acquired distinctiveness.

57. Defendants knowingly and willfully used in commerce a design that is identical or confusingly similar to and constitutes a reproduction of Plaintiff's West Trade Dress and affixed, applied and used false designations of origin and false and misleading descriptions and representations on or in connection with the manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, and/or sale of the Infringing Gown with the intent to cause confusion, to cause mistake and to deceive the purchasing public to believe, in error, that Defendants' substandard Infringing Gown is authorized, sponsored, approved endorsed or licensed by Plaintiff, and/or that Defendants are

affiliated, connected or associated with Plaintiff, thereby creating a likelihood of confusion by consumers as to the source of the Infringing Gown, and allowing Defendants to capitalize on the goodwill associated with, and the consumer recognition of, Plaintiff's West Trade Dress, to Defendants' substantial profit in blatant disregard of Plaintiff's rights.

58. By manufacturing, importing, exporting and/or assisting and/or encouraging third parties to manufacture, import, export and by themselves advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Infringing Gown, which is identical to, confusingly similar to or a colorable imitation of Plaintiff's West Gown, and using a design that is identical and/or confusingly or substantially similar to, or which constitutes a colorable imitation of Plaintiff's West Trade Dress and JLM Work, Defendants have traded off the extensive goodwill of Plaintiff and its West Gown to induce, and did induce, and intends and will continue to induce customers to purchase its Infringing Gown, thereby directly and unfairly competing with Plaintiff. Such actions have permitted, and will continue to permit Defendants to make substantial sales and profits based on the goodwill and reputation of Plaintiff that it has amassed through its marketing, advertising, sales and consumer recognition.

59. Defendants knew or, by the exercise of reasonable care, should have known, that their adoption and commencement of and continuing use in commerce of a design that is identical or confusingly and substantially similar to and constitutes a reproduction of Plaintiff's West Trade Dress and JLM Work would cause confusion, mistake, or deception among purchasers, consumers, the public and the trade.

60. On information and belief, Defendants' aforementioned wrongful actions have been knowing, deliberate, willful, intended to cause confusion, to cause mistake and to

deceive the trade and the purchasing public, and with the intent to trade on the goodwill and reputation of Plaintiff, its West Gown, West Trade Dress and JLM Work.

61. As a direct and proximate result of Defendants' aforementioned actions, Defendants have caused irreparable injury to Plaintiff by depriving Plaintiff of sales of its West Gown and by depriving Plaintiff of the value of its West Trade Dress as a commercial asset, for which it has no adequate remedy at law, and unless immediately restrained, Defendants will continue to cause substantial and irreparable injury to Plaintiff and the goodwill and reputation associated with the value of Plaintiff's West Trade Dress in an amount as yet unknown, but to be determined at trial.

62. Based on Defendants' wrongful actions, Plaintiff is entitled to injunctive relief as well as monetary damages and other remedies provided by the Lanham Act, including damages that Plaintiff has sustained and will sustain as a result of Defendants' unlawful and infringing actions as alleged herein, and all gains, profits and advantages obtained by Defendants as a result thereof, enhanced discretionary damages and reasonable attorneys' fees and costs.

FOURTH CAUSE OF ACTION
(Trade Libel/Product Disparagement)
[New York Common Law]

63. Plaintiff repleads and incorporates by reference each and every allegation set forth in the preceding paragraphs.

64. By engaging in the acts and practices described *supra*, and specifically, at a minimum, by posting and/or causing others to post deceitful comments on social media, knowing that such statements are/were untrue, Defendants have intentionally made false and misleading statements about JLM's products, including, without limitation, the West Gown.

65. Defendants deliberately made such false and misleading statements about JLM's products, including, without limitation, the West Gown, with the deliberate intent to

injure JLM's business, to unfairly divert customers away from purchasing JLM's products, including the West Gown, and/or with willful, wanton or reckless disregard for JLM's rights, and with full knowledge that their conduct would deceive customers seeing any such statements.

66. As a direct consequence of Defendants' actions, as set forth herein, JLM's business and its reputation have been damaged, and JLM has lost customers and sales.

67. Defendants' defamatory postings were and/or have been widely disseminated via social media, thereby spreading the damage caused to Plaintiff and its business by Defendants.

68. Defendants posted the defamatory and false statements referenced herein in bad faith.

69. In light of Defendants' wrongful actions, Plaintiff is entitled to recover damages in an amount to be determined at trial, costs, disbursements and attorneys' fees.

FIFTH CAUSE OF ACTION
(Unfair Competition)
[New York Common Law]

70. Plaintiff repleads and incorporates by reference each and every allegation set forth in the preceding paragraphs.

71. By manufacturing, importing, exporting and/or assisting and/or encouraging third parties to manufacture, import, export and/or by themselves advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Infringing Gown, Defendants have traded off the extensive goodwill of Plaintiff and its West Gown to induce, and did induce, and intends and will continue to induce customers to purchase its Infringing Gown, thereby directly competing with Plaintiff. Such actions have permitted, and will continue to permit Defendants to make substantial sales and profits based on the goodwill and reputation of Plaintiff that it has amassed through its international marketing,

advertising, sales and consumer recognition.

72. Defendants' advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Infringing Gown was, and is, in violation and derogation of Plaintiff's rights and is likely to cause confusion, cause mistake and to deceive consumers and the public as to the source, origin, sponsorship, or quality of Defendants' Infringing Gown.

73. Defendants knew, or by the exercise of reasonable care should have known, that their advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Infringing Gown and their continuing advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Infringing Gown would cause confusion, cause mistake or deceive purchasers, users and the public.

74. Upon information and belief, Defendants' aforementioned wrongful actions have been knowing, deliberate, willful, intended to cause confusion, to cause mistake and to deceive, in blatant disregard of Plaintiff's rights, and for the wrongful purpose of injuring Plaintiff and its competitive position while benefiting Defendants.

75. As a direct and proximate result of Defendants' aforementioned wrongful actions, Plaintiff has been, and will continue to be, deprived of substantial sales of its West Gown in an amount as yet unknown but to be determined at trial, and has been, and will continue to be, deprived of the value of the West Trade Dress as a commercial asset, in an amount as yet unknown but to be determined at trial.

76. Plaintiff has no adequate remedy at law for Defendants' continuing violation of its rights, as set forth above. Plaintiff seeks injunctive relief, an order granting

Plaintiff's damages and Defendants' profits stemming from their infringing activities and exemplary or punitive damages for Defendants' intentional misconduct.

SIXTH CAUSE OF ACTION
(Unjust Enrichment)
[New York Common Law]

77. Plaintiff repleads and incorporates by reference each and every allegation set forth in the preceding paragraphs.

78. By virtue of the egregious and illegal actions of Defendants as alleged herein, Defendants have been unjustly enriched in an amount to proven at trial.

79. Defendants' retention of monies gained through its deceptive business practices, infringement, acts of deceit and otherwise would serve to unjustly enrich Defendants and would be contrary to the interests of justice.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, inclusive, and each of them, as follows:

A. For an award of Plaintiff's actual damages and Defendants' profits, pursuant to 17 U.S.C. § 504(b) in an amount to be proven at trial for willful copyright infringement of Plaintiff's JLM Work under 17 U.S.C. § 501(a);

B. In the alternative to Plaintiff's actual damages and Defendants' profits for copyright infringement of Plaintiff's JLM Work pursuant to 17 U.S.C. § 504(b), for statutory damages of up to $150,000 per work infringed pursuant to 17 USC § 504(c) for willful copyright infringement, which Plaintiff may elect prior to the rendering of final judgment;

C. For an award of Defendants' profits and Plaintiff's damages pursuant to 15 U.S.C. § 1117(a) in an amount to be proven at trial and such other compensatory damages as the

Court determines to be fair and appropriate pursuant to 15 U.S.C. § 1117(a) for trade dress infringement under 15 U.S.C. §1125(a);

D. For an award of Defendants' profits and Plaintiff's damages pursuant to 15 U.S.C. § 1117(a) in an amount to be proven at trial and such other compensatory damages as the Court determines to be fair and appropriate pursuant to 15 U.S.C. § 1117(a) for false designation of origin and unfair competition under 15 U.S.C. §1125(a);

E. For an award of damages in an amount to be proven at trial for trade libel/product disparagement;

F. For an award of damages to be proven at trial for common law unfair competition;

G. For an award of damages in an amount to be proven at trial for unjust enrichment;

H. For a preliminary and permanent injunction by this Court enjoining and prohibiting Defendants, or their agents, and any employees, agents, servants, officers, representatives, directors, attorneys, successors, affiliates, assigns, and entities owned or controlled by Defendants, and all those in active concert or participation with Defendants, and each of them who receives notice directly or otherwise of such injunction from:

i. manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Infringing Gown;

ii. directly or indirectly infringing in any manner any of Plaintiff's copyrights, trademarks or other exclusive rights (whether now in existence or hereafter created) including, without limitation, the West Trade Dress and JLM Work;

iii. using any reproduction, counterfeit, copy or colorable imitation of

Plaintiff's copyrights, trademarks or other exclusive rights (whether now in existence or hereafter created) including, without limitation Plaintiff's West Trade Dress and/or JLM Work to identify any goods or services not authorized by JLM;

iv. using any of Plaintiff's copyrights, trademarks or other exclusive rights (whether now in existence or hereafter created) including, without limitation Plaintiff's West Trade Dress and/or JLM Work, or any other marks, designs or artwork that are confusingly or substantially similar to Plaintiff's West Trade Dress and/or JLM Work on or in connection with Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Infringing Gown;

v. using any false designation of origin or false description, or engaging in any action which is likely to cause confusion, cause mistake and/or to deceive members of the trade and/or the public as to the affiliation, connection or association of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale, or sold by Defendants with Plaintiff, and/or as to the origin, sponsorship or approval of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale, or sold by Defendants and Defendants' commercial activities by Plaintiff;

vi. engaging in the unlawful, unfair, or fraudulent business acts or practices, including, without limitation, the actions described herein, including the advertising and/or dealing in the Infringing Gown;

vii. engaging in any other actions that constitute unfair competition with Plaintiff;

viii. engaging in any other act in derogation of Plaintiff's rights;

ix. secreting, destroying, altering, removing, or otherwise dealing with the unauthorized products or any books or records that contain any information relating to manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Infringing Gown;

x. effecting assignments or transfers, forming new entities or associations, or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in any Final Judgment or Order in this action; and

xi. instructing, assisting, aiding or abetting any other person or entity in engaging in or performing any of the activities referred to in subparagraphs (i) through (x) above; and

I. For an order of the Court requiring that Defendants recall from any distributors and retailers and deliver up to Plaintiff for destruction any and all copies of the Infringing Gown and any and all packaging, labels, tags, advertising and promotional materials and any other materials in the possession, custody or control of such distributors and retailers that infringe any of Plaintiff's copyrights, trademarks or other exclusive rights including, without limitation, the West Trade Dress or JLM Work, or bear any marks or artwork that are confusingly or substantially similar to the West Trade Dress and/or JLM Work;

J. For an order of the court requiring that Defendants deliver up for destruction to Plaintiff any and all copies of the Infringing Gown and any and all packaging, labels, tags, advertising and promotional materials and any other materials in the possession, custody or control of Defendants that infringe any of Plaintiff's copyrights, trademarks or other exclusive rights including, without limitation, the West Trade Dress or JLM Work, or bear any marks, designs or artwork that are confusingly or substantially similar to the West Trade Dress and/or JLM Work pursuant to 15 U.S.C. § 1118.

K. For an order from the Court requiring that Defendants provide complete accountings for any and all monies, profits, gains and advantages derived by Defendants from their manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, sale and/or otherwise dealing in the Infringing Gown as described herein, including prejudgment interest.

L. For an order from the Court that an asset freeze or constructive trust be imposed over any and all monies, profits, gains and advantages in Defendants' possession which rightfully belong to Plaintiff;

M. For an award of exemplary or punitive damages in an amount to be determined by the Court;

N. For Plaintiff's reasonable attorneys' fees;

O. For all costs of suit; and

P. For such other and further relief as the Court may deem just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a trial by jury on all claims.

Dated: June 6, 2017

Respectfully submitted,

EPSTEIN DRANGEL LLP

BY:/s/ Kerry B. Brownlee
Kerry B. Brownlee (KB 0823)
kbrownlee@ipcounselors.com
Jason M. Drangel (JD 7204)
jdrangel@ipcounselors.com
Ashly E. Sands (AS 7715)
asands@ipcounselors.com
60 East 42nd Street, Suite 2520
New York, NY 10165
Telephone: (212) 292-5390
Facsimile: (212) 292-5391
Attorneys for Plaintiff
JLM Couture, Inc.